

UNITED STATES DISTRICT COURT

for the

2017 JUN 13 AM 8:55

Eastern District of New York

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

Civil Division

Case No. **CV 17-3532**
(to be filled in by the Clerk's Office)JUAN SANDOVAL, M.D.*Plaintiff(s)**(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

-v-

DEPARTMENT OF HEALTH & HUMAN SERVICES*Defendant(s)**(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*Jury Trial: (check one) Yes No**IRIZARRY, CH.J.****MANN, M.J.**

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Juan Sandoval, M.D.</u>
Street Address	<u>9413 Flatlands Avenue, Ste. 206E</u>
City and County	<u>Brooklyn, Kings County</u>
State and Zip Code	<u>NY 11236</u>
Telephone Number	<u>(718) 485-2420</u>
E-mail Address	

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name	<u>Department of Health & Human Services</u>
Job or Title (<i>if known</i>)	
Street Address	<u>330 Independence Avenue, S.W., Switzer Building</u>
City and County	
State and Zip Code	<u>Washington, D.C., 20201</u>
Telephone Number	
E-mail Address (<i>if known</i>)	

Defendant No. 2

Name	
Job or Title (<i>if known</i>)	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address (<i>if known</i>)	

Defendant No. 3

Name	
Job or Title (<i>if known</i>)	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address (<i>if known</i>)	

Defendant No. 4

Name	
Job or Title (<i>if known</i>)	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address (<i>if known</i>)	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

Federal question Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

Federal Tort Claims Act 28 U.S.C. 1346(b)

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* _____, is a citizen of the
State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated
under the laws of the State of *(name)* _____,
and has its principal place of business in the State of *(name)*
_____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of
the State of *(name)* _____. Or is a citizen of

(foreign nation) _____

b. If the defendant is a corporation

The defendant, (name) _____, is incorporated under the laws of the State of (name) _____, and has its principal place of business in the State of (name) _____.
Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Plaintiff Juan Sandoval, M.D., a defendant in a state court medical malpractice action against him, claims entitlement under the Federal Tort Claims Act on the basis that at all times relevant, he was a federal employee of the United States Public Health Service ("PHS"), as respects his work at the Brownsville Community Development Center, a federal facility pursuant to the Federally Supported Health Centers Assistance Act, since August 2, 2002. He was working in this capacity on August 7, 2005, which employment involved him in the aforesaid state court medical malpractice action now pending in Supreme Court of the State of New York, County of Kings ("Twana Burton-Woods, as Mother and Natural Guardian of Tearra Aliyah Woods v. Kecia Gaither, M.D., Lola Loeb, M.D. Atwal Maninderjit, M.D., Juan Sandoval, M.D. and Brookdale Hospital Medical Center"; Case No. 7832/2015). That action makes claim for damages on behalf of the infant plaintiff in the nature of cerebral injury sustained during her labor and delivery. Plaintiff made demand upon the United States Department of Health & Human Services ("HHS") for indemnification in that action for any liability arising from the care and treatment provided to the infant plaintiff under existing precedent and pursuant to the prior custom and practice existing between plaintiff and the PHS. HHS refused plaintiff's demand to properly certify him as a federal employee pursuant to the Federal Tort Claims Act 28 U.S.C. 1346(b). Plaintiff administratively appealed from that refusal by letter-brief on October 25, 2016. There has been no response or acknowledgment by HHS to that letter-brief. Plaintiff has thereby exhausted all administrative remedies as respects this matter.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

The plaintiff asks the court to declare that Juan Sandoval, M.D. is a certified federal employee of the Public Health Service, working in that capacity for the duration of treatment of the aforesigned case, indemnify him from any future proceedings, and order his representation by the United States Department of Justice in accordance with the Federal Tort Claims Act 28 U.S.C. 1346(b), or in the alternative, remanding this matter to HHS with instructions to so certify him.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____

Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: 5/30/17

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

Raymond W. Belair

Raymond W. Belair

9297

Belair & Evans, LLP

90 Broad St, 14 Fl, NY, NY 10004

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

State and Zip Code

NY 10004

Telephone Number

(212) 344-3900

E-mail Address

R.Belair @ belair-evans.com